

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 9 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

OSSIE GILES,

Plaintiff-Appellant,

v.

RON DAVIS; G. FORNCROOK, A.W.; J.
ARNOLD, Cpt.; R. SHELTON, Lt.; J.
SANGMASTER, Sgt.; A. MAXFIELD,
CC2; Y. SAMARA, CDO; R.
BLOOMFIELD, A.W.,

Defendants-Appellees,

F. JAUGAN, C.O.; J. CARTWRIGHT, C.O.;
M. VOONG, C.O.A.; R. PEARL,
Psychologist,

Defendants-Appellees,

and

M. NELSON,

Defendant.

No. 21-15466

D.C. No. 4:18-cv-07466-YGR

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Yvonne Gonzalez Rogers, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Submitted January 5, 2023**
San Francisco, California

Before: HAWKINS, S.R. THOMAS, and McKEOWN, Circuit Judges.

Ossie Giles, a California state prisoner proceeding *pro se*, appeals the district court's order granting summary judgment for the defendants in his 42 U.S.C.

§ 1983 action alleging that prison officials violated his First, Eighth, and Fourteenth Amendment rights. We review the district court's determination that Giles failed to exhaust administrative remedies and the district court's grant of summary judgment *de novo*, *Nunez v. Duncan*, 591 F.3d 1217, 1222 (9th Cir. 2010), and we may affirm on any ground supported by the record, *Simmons v. G. Arnett*, 47 F.4th 927, 932 (9th Cir. 2022). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The district court properly dismissed Giles's claim that prison officials denied his grievance appeals in violation of his First Amendment rights. The Prison Litigation Reform Act requires prisoners to "exhaust such administrative remedies as are available" before filing a complaint in federal court. *Merchant v. Corizon Health, Inc.*, 993 F.3d 733, 742 (9th Cir. 2021) (internal quotation marks omitted). By Giles's own admission, he did not exhaust administrative remedies

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

on this claim.

The district court properly granted summary judgment on Giles's First Amendment claim based on allegations that prison officials retaliated against him for filing a grievance against a correctional officer. A prisoner asserting a retaliation claim must show that prison officials took an adverse action against him because of his protected conduct, that the adverse action chilled his "exercise of his First Amendment rights," and that "the action did not reasonably advance a legitimate correctional goal." *Shepard v. Quillen*, 840 F.3d 686, 688 (9th Cir. 2016) (quoting *Rhodes v. Robinson*, 408 F.3d 559, 567–68 (9th Cir. 2005)). Giles did not submit evidence indicating that the prison officials knew about his grievance or evidence linking the prison officials' conduct to the grievance. He therefore cannot show that the prison officials took adverse action against him because he filed the grievance.

The district court also properly granted summary judgment on Giles's Eighth Amendment claims related to his placement in administrative segregation and the alleged failure of prison officials to correct falsities in the rules violation report that resulted in his placement in administrative segregation. Giles asserts that he suffered from anxiety and sleep deprivation because of his time in administrative segregation. But Giles cannot establish an Eighth Amendment claim based on his conditions of confinement because he provided no evidence that

his time in administrative segregation “involve[d] the wanton and unnecessary infliction of pain” or was “devoid of legitimate penological purpose.” *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 2006). Further, Giles cannot show that prison officials acted with deliberate indifference by failing to correct the rules violation report because he provided no evidence that prison officials knew of his anxiety and sleep deprivation or that they knew placing him in administrative segregation posed “an excessive risk to [his] health and safety.” *See Colwell v. Bannister*, 763 F.3d 1060, 1066 (9th Cir. 2014) (quoting *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004)).

Finally, the district court properly granted summary judgment on Giles’s due process claims related to his placement in administrative segregation and the alleged failure of prison officials to correct falsities in the rules violation report that resulted in his placement in administrative segregation. “[T]o analyze a procedural due process claim, we engage in a two-step analysis: First, we determine whether the inmate was deprived of a constitutionally protected liberty or property interest. Second, we examine whether that deprivation was accompanied by sufficient procedural protections.” *Johnson v. Ryan*, No. 20-15293, __ F. 4th __, 2022 WL 17686048, at *7 (9th Cir. 2022). Here, Giles cannot show that he was deprived of a protected liberty interest by being placed in administrative segregation because he did not provide evidence that administrative segregation “impose[d] atypical

and significant hardship on [him] in relation to the ordinary incidents of prison life.” *See id.* Similarly, as to his claim related to the allegedly falsified rules violation report, Giles presented no evidence that prison officials deprived him of any constitutionally required process. He provided only conclusory assertions that prison officials knew the information in the rules report violation was false, which is insufficient to create a genuine issue of material fact. *See Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993) (per curiam).

AFFIRMED.